A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Civil Revision No.68 of 2007

Petitioner — Uttam Rajak, Son of Late Amberlal Rajak, aged about 45 years, Occupation Uttam Laundry, Torwa, in front of Bilaspur Post Office, Tahsil and District Bilaspur (CG)

Versus

Respondent — Smt. Shanti Bai Chouksey, widow of Late Lakhanlal Chouksey, aged about 80 years, Occupation House Wife, Resident of Torwa Naka, in front of Bilaspur Post Office, Tahsil and District Bilaspur (CG)

Civil Revision under Section 23 (E) of the Chhattisgarh Accommodation Control Act, 1961

Present :
Shri N.L. Soni, counsel for the petitioner.
Shri R.K. Tiwari, counsel for the respondent.

ORAL ORDER
(Passed on 23-08-2007)

Heard on application for amendment of the revision petition for raising additional grounds.

(2) Prayer is not opposed. Amendment be incorporated today.

(3) This revision was finally heard today.

(4) The petitioner/tenant is aggrieved by the order dated 5.5.2007 passed by the Rent Controlling Authority, Bilaspur (hereinafter referred to as the R.C.A.) in case No.2/A-90(6)/2006-07, whereby the application filed by the petitioner/tenant under Section 23-C of the

Chhattisgarh Accommodation Control Act, 1961 (henceforth 'the Act, 1961') for permission to contest the application for eviction was rejected on the ground that it was not filed within 15 days from the date of service of notice upon him.

(5) Brief undisputed facts are that the respondent/landlord filed an application under Section 23-A of the Act, 1961 before the R.C.A. for eviction of the petitioner/tenant on 30.12.2006. Summons to the tenant was not issued in the form specified in the 2nd Schedule to the Act, 1961. The petitioner/tenant appeared before the RCA on 19.1.2007 on which date he was supplied with a copy of the application filed under Section 23-A by the landlord. On 27.1.2007, the petitioner/tenant filed an application under Section 23-C of the Act, 1961 for permission to contest the application.

(6) The R.C.A. rejected the application under Section 23-C of the Act, 1961 dated 27.1.2007 filed by the petitioner/tenant as barred by limitation on the ground that the summons was served on the petitioner on 9.1.2007 and therefore, he ought to have moved an application under Section 23-C of the Act, 1961 within 15 days.

(7) Shri N.L. Soni, learned counsel for the petitioner argued that on an application being filed under Section 23-A of the Act, the R.C.A. is under an obligation to issue summons to the petitioner/tenant in the form specified in the 2nd Schedule. It was further contended that Section 23-C of the Act, 1961 further stipulates that the right to file an application therein accrues to the tenant only upon service of

summons in the form specified in the 2nd Schedule. Since no summons was issued in the form specified in the 2nd Schedule, the R.C.A. erred in computing the period of 15 days provided under sub-section (1) of Section 23-C of the Act, 1961 from the date of service of the summons on the petitioner/tenant on 9.1.2007. It was also urged that a copy of the application under Section 23-A of the Act, 1961 was not served along with the summons issued in a routine manner and only on first appearance before the R.C.A. on 19.1.2007, the petitioner/tenant was supplied with a copy of the application under Section 23-A of the Act, 1961. In this manner, the application for permission to contest the application under Section 23-A of the Act, 1961 having been filed on 27.1.2007 was within limitation and the impugned order is liable to be set aside.

(8) On the other hand, Shri R.K. Tiwari, learned counsel for the respondent/landlord submitted that the petitioner/tenant did not raise any such ground mentioned above in his application dated 27.1.2007 before the R.C.A. and therefore, the impugned order passed by the R.C.A. could not be faulted with.

(9) Having heard the rival submissions, I have perused the impugned order passed by the R.C.A. Chapter III-A of the Act, 1961 deals with eviction of tenants on grounds of "bona fide" requirement. Section 23-A of the Act, 1961 reads as under:

> **"23-A. Special provision for eviction of tenant on ground of bona fide requirement.-** Notwithstanding anything contained in any other law for the time being in force or contract to the contrary, a landlord may submit an application, signed and verified in a manner provided in rules

14 and 15 of Order VI of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908) as if it were a plaint to the Rent Controlling Authority on one or more of the following grounds for an order directing the tenant to put the landlord in possession of the accommodation, namely:-

(a) that the accommodation let for residential purposes is required "bona fide" by the landlord for occupation as residence for himself or for any member of his family, or for any person for whose benefit, the accommodation is held and that the landlord or such person has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned.

Explanation.- For the purposes of this clause "accommodation let for residential purposes" includes-

(i) any accommodation which having been let for use as a residence is without the express consent of the landlord, used wholly or partly for any non-residential purpose;

(ii) any accommodation which has not been let under an express provision of contract for non -residential purpose;

(b) that the accommodation let for non-residential purposes is required "bona fide" by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters, if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned:

Provided that where a person who is a landlord has acquired any accommodation or any interest therein by transfer, no application for eviction of tenant of such accommodation shall be maintainable at the instance of such person unless a period of one year has elapsed from the date of such acquisition".

(10) Section 23-B of the Act, 1961 further provides as under:

"23-B. – Rent Controlling Authority to issue summons in relation to every application under Section 23-A.- (1) The Rent Controlling Authority shall issue to the tenant a summons, in relation to

every application referred to in section 23-A, in the form specified in the Second Schedule.

(2) Save as otherwise provided in this Act, the provisions of order V and Order XVI of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908) regarding issue and service of summons to a defendant and summoning and attendance of witnesses to give evidence or to produce documents shall apply "*mutatis mutandis*" to issue and service of any summons to a tenant or opposite party or to a witness to give evidence or to produce documents in an inquiry or proceeding under this Chapter".

(11) A plain reading of Section 23-B of the Act, 1961 leaves no room for any doubt that the R.C.A. is under an obligation to issue summons in relation to every application under Section 23-A of the Act, 1961, in the form specified in the 2nd Schedule, which is as under:

"SECOND SCHEDULE
(See Section 23-B)

Form of summons in a case where recovery of possession of accommodation is prayed for on grounds of "bona fide" requirement

Office of the Rent Controlling Authority, (Place).....

To

.....
.....
.....

Eviction Case No.....

Whereas Shri ..... has filed an application (a copy of which is annexed) for your eviction from (here insert the particulars of the accommodation) on the grounds specified in clause (a)/clause (b) of section 23-A of the Chhattisgarh Accommodation Control Act, 1961 (No.41 of 1961)

You are hereby summoned to appear before the Rent Controlling Authority within fifteen days of the service for hearing and to obtain the leave of the Rent Controlling Authority to contest the application for eviction on the grounds aforesaid; in default whereof the applicant will be entitled at any time after the expiry of the said period of fifteen days to obtain an order for your eviction from the said

accommodation. Subject as aforesaid the date for further proceedings shall be .....

Leave to appear and contest the application may be obtained on an application to the Rent Controlling Authority supported by an affidavit as is referred to in section 23-C. Given under my hand and seal.

This ..... day of ..... 20.....

.....
Rent Controlling Authority"

(12) It is thus clear that the purpose of issuance of summons to the tenant in the form prescribed in the 2nd Schedule is to give notice to the tenant that he may appear within 15 days of the service of such notice and obtain the leave of the R.C.A. to contest the application for eviction failing which the landlord would be entitled to obtain an order for eviction.

(13) Section 23-C of the Act, 1961 reads as under:

> **"23-C. Tenant not entitled to contest except under certain circumstances**.-(1) The tenant on whom the summons is served in the form specified in the Second Schedule shall not contest the prayer for eviction from the accommodation unless he files within fifteen days from the date of service of the summons, an application supported by an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Rent Controlling Authority as hereinafter provided, and in default of his appearance in pursuance of the summons or in default of his obtaining such leave, or if such leave is refused, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant. The Rent Controlling Authority shall in such a case pass an order of eviction of the tenant from the accommodation:
>
> Provided that the Rent Controlling Authority may, for sufficient cause shown by the tenant, excuse the delay of the tenant in entering appearance or in applying for leave to defend the application for

eviction and where :"*ex-parte*" order has been passed, may set it aside.

(2) The Rent Controlling Authority shall, within one month of the date of receipt of application, give to the tenant, if necessary, leave to contest the application, if the application supported by an affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the accommodation on the ground specified in section 23-A".

(14) A perusal of sub-section (1) of Section 23-Cof the Act makes it further clear that the condition of service of summons upon the tenant in the form specified in the 2nd Schedule is a *sine qua non* for filing an application to seek permission to contest the application for eviction within 15 days from the date of such service of the summons.

(15) In this manner, it is clear that issuance of summons as prescribed under Schedule-2 to the tenant is not a mere formality but is mandatory. In the absence of a summons having been issued to the petitioner/tenant by the R.C.A. in the form prescribed under Schedule-2, the application dated 27.1.2007 filed by the tenant for leave to contest the application could not be rejected on the ground of limitation. More so, in view of the fact that copy of the application under Section 23-A of the Act, 1961 was served on the petitioner/tenant for the first time on 19.1.2007 on first appearance of the tenant before the R.C.A. In this manner, due to non-compliance of the mandatory provision contained in Section 23-B of the Act, 1961 the impugned order is liable to be set aside.

(16) In the result, the revision is allowed. Order dated 5.5.2007 passed by the R.C.A., Bilaspur is set aside. The R.C.A shall, after

giving opportunity of hearing to the parties and affording an opportunity to the petitioner/tenant to substantiate the grounds mentioned in the application under Section 23-C of the Act, 1961 for seeking permission to contest the application under Section 23-A of the Act, 1961, decide the application filed by the tenant under Section 23-C of the Act, 1961 on merits.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Priya